

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NOUJOUD ACHKAR	:	NO: 18-2860
JOSEPH ACHKAR	:	
	:	
W/H	:	
	:	
(Plaintiffs)	:	
	:	
v.	:	
	:	
WISCONSIN CHEESE GROUP, LLC	:	
D/B/A LA MORENITA BRAND	:	
WALMART, INC.	:	
	:	
(Defendants)	:	

**DEFENDANT, WISCONSIN CHEESE GROUP, LLC d/b/a LA MORENITA BRAND'S
PRETRIAL MEMORANDUM**

Defendant, Wisconsin Cheese Group, LLC d/b/a La Morenita Brand, by and through its attorneys, William J. Ferren & Associates, hereby submits the following Pretrial Memorandum as follows:

I. STATEMENT OF THE NATURE OF THE ACTION

This matter is a strict liability action with companion loss of consortium claim stemming from illness suffered by Plaintiff, Noujoud Achkar on May 1, 2017 after allegedly eating La Morenita Brand queso fresco cheese. Jurisdiction in this matter is based on diversity between the parties.

II. DEFENDANT'S STATEMENT OF FACTS

Wisconsin Cheese Group, LLC (hereinafter "WCG") manufactures / distributes La Morenita Brand queso fresco to Walmart, Inc. WCG manufactured and packaged the queso fresco at issue on January 18, 2017. It had a shelf life / expiration date of 90 days from manufacture (April 18, 2017). Once the product is shipped by WCG, it has no control over its

storage. Walmart, Inc. sells La Morenita Brand queso fresco manufactured and distributed by WCG.

Per the Complaint and her deposition testimony, Plaintiff, Noujoud Achkar purchased La Morenita Brand queso fresco on May 1, 2017 from a Walmart store in Whitehall, PA. She paid for the queso fresco with cash and did not purchase any other items. She returned home, opened the queso fresco package with a knife, sliced the queso fresco with a knife while it was in the package and ate one slice of queso fresco with pita bread. Mrs. Achkar became sick less than an hour after eating the queso fresco while going to her bedroom to sleep. Mrs. Achkar was taken to Lehigh Valley Hospital during the morning of May 2, 2017. She cannot recall events that took place between when she fell ill at home and woke later at the hospital (listeriosis). She recalled usually having cereal and milk or bread with apricot jam for breakfast. Mrs. Achkar could not specifically recall what she ate before May 1, 2017 but said she would eat beans and rice, pasta and rice with chicken.

The Pennsylvania Department of Health removed items from Plaintiffs' refrigerator and tested four items (two cheeses, ham and ground meat). The WCG queso fresco package was found open in the refrigerator and tested positive for *Listeria monocytogenes*. At the hospital, a test of Mrs. Achkar's blood also tested positive for *Listeria monocytogenes*.

WCG is only aware of Plaintiffs' claim with regard to the queso fresco at issue. The FDA visited WCG's facilities but there was no recall of the queso fresco. Since this incident, Mrs. Achkar claims that she has trouble gripping things, shaking hands and episodes of dizziness. She is not currently treating after acute care (approx. 13 days) and inpatient rehabilitation (approx. 22 days) at Lehigh Valley Hospital. Mrs. Achkar also had in-home care after discharge from the hospital.

III. DEFENDANT'S STATEMENT REGARDING MONETARY DAMAGES

Upon information and belief, there is a Medicare lien related to Mrs. Achkar's treatment totaling \$59,701.51. Mrs. Achkar was not working at the time of the incident at issue and there is no claim for lost earnings or loss of future earning capacity.

IV. LIST OF POTENTIAL WITNESSES

Defendant, Wisconsin Cheese Group LLC lists the following potential witnesses:

1. Noujod Achkar and Joseph Achkar – **Liability and Damages**
1520 N. 27th Street
Allentown, PA 18104

It is anticipated that Mrs. Achkar will testify regarding the circumstances of the purchase and consumption of the queso fresco cheese product at issue and how and when she became ill afterward. It is also anticipated that Mrs. Achkar will testify about the scope and extent of her treatment after the incident. Mr. Achkar will testify about the circumstances of the incident at issue including Mrs. Achkar's purchase and consumption of the cheese and her treatment at Lehigh Valley Hospital. It is anticipated that Mr. Achkar will provide testimony regarding his loss of consortium claim.

2. Fadi Achkar – **Liability and Damages**
733 7th Street
Whitehall, PA 18052

It is anticipated that Fadi Achkar will testify about interactions with medical professional and representatives from the Pennsylvania Department of Health after the incident.

3. Dale Losenegger - **Liability**
Wisconsin Cheese Group, LLC
105 3rd Street
Monroe, WI 53566

Dale Losenegger is VP of Operations for Wisconsin Cheese Group, LLC and has knowledge of Wisconsin Cheese Group, LLC's company operations, production and packaging and will testify regarding same.

4. Michelle Riese - **Liability**
Wisconsin Cheese Group, LLC
105 3rd Street
Monroe, WI 53566

Michelle Riese is the QA Director for Wisconsin Cheese Group, LLC and is involved in all product testing and policies and procedures taken to ensure safety of Defendant's products like the cheese product at issue.

5. Chad Endy - **Liability**
Corporate Designee of Co-Defendant, Walmart, Inc.
c/o John J. Delany, III, Esquire / Robert A. DiSandro, Esquire
Delany McBride
1500 JFK Blvd., Ste. 415
Philadelphia, PA 19102

Mr. Endy's deposition is currently scheduled on April 15, 2019 so the full extent of his testimony is not yet known. It is anticipated that Mr. Endy will testify with regard to the Whitehall, PA Walmart at issue where the Plaintiffs claim the queso fresco was purchased.

6. Arthur J. Miller, Ph.D., CFS - **Liability**
17000 Science Drive, Suite 200
Bowie, Maryland 20715

Dr. Miller will testify as an expert in support of Defendant's defense to the claims set forth against it by the Plaintiffs. A copy of Dr. Miller's report and curriculum vitae is attached to Defendant's Pretrial Memorandum as Exhibit "A."

7. Chester C. Clarke, M.D., M.P.H. – **Liability and Damages**
17000 Science Drive, Suite 200
Bowie, Maryland 20715

Dr. Clarke will testify as an expert in support of Defendant's defense to the claims set forth against it by the Plaintiffs. A copy of Dr. Clarke's report and curriculum vitae is attached to Defendant's Pretrial Memorandum as Exhibit "B."

8. Defendant, Wisconsin Cheese Group, LLC reserves the right to call any and all of Plaintiff's treating physicians and custodians of records of facilities where Plaintiff received treatment.

9. Defendant, Wisconsin Cheese Group, LLC reserves the right to call any and all liability and/or damages witnesses identified by Plaintiffs and Co-Defendant, Walmart, Inc.

V. SCHEDULE OF POTENTIAL EXHIBITS

Defendant, Wisconsin Cheese Group LLC lists the following joint schedule of potential exhibits:

Exhibit	Description	Identified	Objection	Admitted/Not Admitted
D001	Report of Arthur Miller, PhD dated Feb 21, 2019			
D002	Photos of La Morenita Queso Fresco Packaging			
D003	Report of Chester Clarke, MD			
D004	Lehigh Valley Hospital Records			
D005	US FDA EIR records and summary w/attachments			
D006	WCG Invoice 119888			
D007	WCG Picking Ticket			
D008	WCG Pallet list #880 and #2535			
D009	LM 24 oz Fresco POS - Whitehall, PA			
D010	WCG 2.6.3.06 Product Withdrawal & Recall Program			
D011	WCG Product Usage Report			
D012	WCG 2.5.4.07 QA Sampling Inspection & Analysis Summary			
D013	WCG 11.2.13.05 Cleaning and Sanitation			
D014	WCG 11.3.1.08 Good Manufacturing Practices			
D015	Make Sheet dated 1.18.2017			
D016	Covance Certificate of Analysis dated			

	1.21.2017			
D017	WCG Analytical Form dated 1.18.2017			
D018	3 rd Street Environmental Pathogen Testing / Covance Certificate of Analysis Reports Dated 1/7/2017 and 1/12/2017			
D019	12 th Street Environmental Pathogen Testing / Covance Certificate of Analysis Reports Dated 1/8/2017, 1/12/2017, 1/15/2017, 1/20/2017 and 2/8/2017			
D020	FDA Overview of Corrective Actions			
D021	WCG's Answers to Plaintiffs' discovery			
D021A	WCG's responses to Plaintiffs' Supplemental RPDs			
D022	WCG's responses to Walmart's discovery			
D023	Plaintiffs' responses to WCG's discovery			
D024	Plaintiff's responses to Walmart's discovery			
D025	Walmart's responses to WCG's discovery			
D026	Walmart's answers to Plaintiffs' Rogs and RPDs			
D027	Complaint			
D028A	WCG Answer to Complaint			
D028B	Walmart Answer to Complaint			
D029	Deposition of Noujoud Achkar dated December 17, 2018			
D030	Deposition of Joseph Achkar dated December 17, 2018			
D031	Deposition of Fadi Achkar dated December 17, 2018			
D032	Deposition of Dale Losenegger dated Jan 21, 2019			
D033	Deposition of Michelle Riese dated Jan 21, 2019			
D034	Deposition Transcript of Arthur J. Miller, Ph.D.			
D035	Videotaped Deposition of Arthur J. Miller, Ph.D.			
D036	Expert report of Donald Zink, PhD dated Feb 20, 2019			
D037	Walmart receipt dated May 1, 2017			
D038	Dr. James Ross Records			
D039	Dr. Yehia Mishriki Records			
P001	Affidavit of Michael Sulzinski, PhD			
P002	Color photos of cheese packaging (also D2)			
P003	PA Dept of Health Bureau of Labs report			

	dated 5.19.2017			
P004	PA Dept of Health Bureau of Labs report dated 5.11.2017			
P005	PA Dept of Health Bureau of Labs report dated 5.10.2017			
P006	PA Dept of Health General Continuation Sheet			
P007	PA Dept of Health Bureau of Labs report dated 5.12.2017			
P008	API Listeria/Biomérieux test results dated 5.18.2017			
P009	WCG Product Usage Report dated Jan 18, 2017			
P010	WCG Invoice #119888 dated Feb 2, 2017			
P011	WCG Picking Ticket dated 1.27.2017			
P012	WCG Pallet 880 report dated 1.19.2017			
P013	WCG Pallet 2535 report dated 1.19.2017			
P014	WCG pallet 879 report dated 1.19.2017			
P015	LM 24oz Fresco POS Qty - Whitehall, PA			
P016	USDA Establishment Inspection report dated 8.16.2017			
P024	PA Dept of Health email dated 7.18.2017 re test on string cheese on 7.10-12.2017			
P025	PA Dept of Health email dated 7.12.2017 re retest of string cheese on 7.10-12.2017			
P026	Taber's 2005 Medical Dictionary entries			
P027	PA Dept of Health email dated 5.23.2017			
P028	PA Dept of Health email dated 8.3.2017			
P029	WCG's answers to Plaintiffs' RFAs			
P030	Walmart's answers to plaintiffs' RFAs			
P031	WCG's Answers to Plaintiff's Interrogatories			
P032	WCG's Answers to Plaintiff's Interrogatories			
P033	Walmart's Answers to Plaintiff's Request for Production of Documents			
P034	Walmart's Answers to Plaintiff's Interrogatories			
P035	Walmart's Answers to Plaintiff's Request for Production			
P036	Plaintiff's Medical Bills			
P037	CMS lien information			
P038	Lehigh Valley Hospital Records			
P039	Deposition Transcript of Walmart Corporate Designee			
P040	All Walmart receipts to be produced			

P041	PA Department of Health records			
P042	PA Department of Health & Human Services records			
P043	Records from US Food & Drug Administration			
P044	Yehia Y. Mishriki, M.D. Records			
P045	Kristin Baracalli, D.O. Records			

V. ESTIMATED LENGTH OF TRIAL

Four to five days including jury selection.

VI. STATEMENT OF LEGAL ISSUES

None at this time other than raised through Motion in Limine and associated Responses filed with the Court.

Respectfully submitted,

WILLIAM J. FERREN & ASSOCIATES

BY: /s/ *Brendan M. Howton*
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